

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

HENRY J. GRAVES, Individually, HENRY J.
GRAVES, HRG ASSOCIATED ALLIANCES
REAL ESTATE SCHOOLS, INC.

Plaintiffs

v.

LAW OFFICE OF DEVINE BARROWS
DEVINE, LP, MICHAEL BARROW,
Individually

Defendants

CIVIL ACTION NO. 04-CV-10634 MEL

DEFENDANT, DEVINE BARROWS DEVINE, LP'S MOTION TO DISMISS PLAINTIFFS'
COMPLAINT AND OPPOSITION TO PLAINTIFFS' MOTION FOR DEFAULT

The defendant, Devine Barrows Devine, moves the court pursuant to Fed. R. Civ. P. Rule 12 to dismiss the plaintiffs' as this court lacks subject matter jurisdiction. The defendant further submits that the complaint should be dismissed for insufficiency of service of process and the defendant opposes the plaintiff's effort to obtain a default, as the complaint has not been properly served on the defendant.

The plaintiff, in his complaint, has not stated the basis pursuant to which this court would have subject matter jurisdiction. Nowhere within the complaint is there reference to a statute or regulation which would give rise to a federal question. Nor is there an assertion of diversity of citizenship of the parties. Rather, what one can glean from a careful reading of the complaint is that the plaintiff is a real estate broker¹ who complains that a closing did not take place on

¹ The website of the Board of Registration of Real Estate Brokers and Salespersons reflects that the plaintiff's license has been revoked by the Board.

property in which he claims the right to a real estate broker's commission for the sale of property located in Roxbury-Dorchester, Massachusetts. Accordingly, this court lacks subject matter jurisdiction and the complaint should be dismissed pursuant to Fed. R. Civ. P. Rule 12(b)(1).

SERVICE OF PROCESS

It has come to the attention of the defendant that the plaintiff has filed a motion for default judgment. The plaintiff's motion should be denied and the complaint dismissed as the plaintiff has failed to properly serve the complaint on the defendant. According to the "certificate of service" filed by the plaintiff in support of his motion for a default, the complaint was served upon the defendant by first class mail. Pursuant to Rule 4 of the Federal Rules of Civil Procedure, this effort at service did not comply with the rules. Accordingly, the complaint should be dismissed pursuant to Fed. R. Civ. P. Rule 12(b)(5) for insufficiency of service of process.

The defendant further incorporates herein and joins in the motion of the co-defendant, Denise R. Allen.

DEVINE BARROWS DEVINE, LP
By its attorneys,


Michael J. Stone, Esq., BBO No.: 482060
PEABODY & ARNOLD, LLP
30 Rowes Wharf
Boston, MA 02110
(617) 951-2100

CERTIFICATE OF SERVICE

I, Michael J. Stone, Esq., hereby certify that on this 20 day of May, 2004, I caused a copy of the above to be served by first class mail, postage prepaid to:

Henry J. Graves, pro se
67-69 Devon Street
P.O. Box 960221
Boston, MA 02197

Darryl D. Malden, Esq.
90 Warren Street, Suite 100
Boston, MA 02119



Michael J. Stone

PABOS2:MSTONE:589255_1
14811-90578